

Internal Revenue Service  
District Director

Department of the Treasury

[REDACTED]

Date: APR 14 1992

Person to Contact:

[REDACTED]

Contact Telephone Number:

[REDACTED]

Refer Reply to:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption under section 501(c)(4) of the Internal Revenue Code.

The evidence presented indicates that you were formed as an association on [REDACTED] in the State of [REDACTED].

The purposes for which the association was formed is to provide for the acquisition, construction, management, maintenance and care of "association property" as those terms are defined in Section 528 of the Internal Revenue Code.

The information submitted with your Form 1024 application indicates that your activities include the upkeep and maintenance of the commonly held areas of the association, such as: snow-plowing; maintenance of the exterior of the buildings; and maintenance of the grounds and parking facilities. The association's financial support is derived of membership dues and special assessments of members. These funds are primarily expended for maintenance of the common areas, insurance and utilities. Evidence is also found in the application that common areas and the parking facility are not open to the general public, but instead limited to use by members and their guests.

Section 501(c)(4) of the Internal Revenue Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it primarily engages in promoting in some way the common good and general welfare of the people of the community.

The concept of social welfare implies a service or program directed at benefitting the community rather than a private affair of individuals.

Revenue Ruling 74-99, 1974-1 C.B. 131 states that a homeowners association must, in addition to otherwise qualifying for exemption under section 501(c)(4) of the Code, satisfy the following requirements: (1) It must engage in activities that confer benefit on a community comprising a geographical unit which bears a reasonably recognizable relationship to an area ordinarily identified as a governmental subdivision or a unit or district thereof; ...and (3) It owns and maintains only common areas or facilities such as roadways and parklands, sidewalks and street lights, access to, or the use and enjoyment of which is extended to members of the general public and is not restricted to members of the homeowners association.

It appears that your organization may elect to file under section 528 to receive certain tax benefits which, in effect, permit the exclusion of exempt function income from gross income. The election to file under section 528 is to be made by filing Form 1120-H, U.S. Income Tax Return for Homeowners Associations. However, if you do not elect to file under section 528, you are required to file Federal income tax returns on Form 1120.

Revenue Ruling 80-63, 1980-1 C.B. 116 clarifies several issues presented in Revenue Ruling 74-99 and further amplifies the point that the use and enjoyment of the common areas owned and maintained by a homeowners' association must be extended to members of the general public, as distinguished from controlled use or access restricted to the members of the association.

Revenue Ruling 74-17, 1974-1 C.B. 131, states that an organization formed by the unit owners of a condominium housing project to provide for the management, maintenance, and care of the common areas of the project with membership assessments paid by the unit owners does not qualify for exemption under section 501(c)(4) of the Code. "By virtue of the essential nature and structure of a condominium system of ownership, the rights, duties, privileges, and immunities of the members of an association of unit owners in a condominium property derive from, and are established by, statutory and contractual provisions and are inextricably and compulsorily tied to the owner's acquisition and enjoyment of his property in the condominium. In addition, ownership necessarily involves ownership in common by all condominium unit owners of a great many so-called common areas, the maintenance and care of which necessarily constitutes the provision of private benefits for the unit owners."

Unlike the organization described in Revenue Ruling 74-99, clarified by Revenue Ruling 80-63, and similar to the organization described in Revenue Ruling 74-17 your organization restricts the use of its common areas to members of the association and the services provided are deemed to benefit the private interests of the condominium unit owners.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(4) of the Code and propose to deny your request for exemption under that section.

Consideration was also given as to whether or not your organization qualifies for exemption under section 501(c)(7) of the Code. Revenue Ruling 80-63 holds that a homeowners' association which establishes a separate organization to own and maintain recreational facilities and restricts their use to members of the association may qualify for exemption under section 501(c)(7) of the Code. See Revenue Ruling 69-281, 1961-1 C.B. 155. However, your activities, which include maintenance of roads and other common areas of the Association as the primary function, are not within the purview of section 501(c)(7) and the purposes of your organization are neither social nor recreational. Accordingly, we conclude that you do not meet the requirements for exemption status under this section.

We have also determined that you fail to qualify for exempt status under any other subsection of IRC 501(c).


You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time, this determination will become final.

Sincerely yours,

  
District Director

Enclosure: Publication 892